

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

US COST MANAGEMENT PARTNERS,
Plaintiff

v.

HI-TEMP, INC.,
Defendant

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CAUSE NO. 5:20-cv-00756

DEFENDANT HI-TEMP, INC.'S NOTICE OF REMOVAL

Defendant, Hi-Temp, Inc., hereby removes this lawsuit, which is currently pending in the 216th Judicial District Court of Kerr County, Texas, with cause No. 20239A, to the United States District Court for the Western District of Texas, San Antonio Division, pursuant to 28 U.S.C. §§ 1332(a), 1441, and 1446, on the grounds of diversity of citizenship, and would respectfully show the Court as follows:

Background

1. Plaintiff is a Texas Corporation in the business of providing accounting review services for their clients with the aim to identify areas of expenses that can save their clients' money.¹
2. Defendant is an Alabama Corporation in the business of manufacturing.² Defendant's primary place of business and the place where it keeps its records is located in Colbert County, Alabama, located at 820 Mississippi St., Tuscumbia, Alabama 35674.
3. Without admitting the validity of a contract Defendant states as follows: Plaintiff claims the parties entered into an agreement on or about March 19, 2018.³

¹ See Exhibit A Plaintiff's Original Petition, "V. Facts" paragraph 6.

² See Exhibit A Plaintiff's Original Petition, "III. Parties" paragraph 4.

4. Plaintiff filed its original petition in Texas State Court on May 7, 2020 styled *US COST MANAGEMENT PARTNERS, v. HI-TEMP, INC.*, in which Plaintiff alleges claims for breach of Contract, Quantum Meruit, and Suit on a Sworn Account.⁴
5. Plaintiff served Defendant with Plaintiff's Original Petition, Request for Disclosures, First Request for Admissions, First set of Interrogatories, and First Request for Production on June 3, 2020.⁵
6. Plaintiff's alleged damages include \$127,121.89⁶, Attorney's Fees⁷, pre and post judgment interest, and appellate attorney's fees, costs, and expenses.⁸
7. At the time of the writing of this notice, Defendant has not answered Plaintiff's suit in State Court.

Grounds for Removal

8. This Court has original jurisdiction of this suit pursuant to 28 U.S.C. §§ 1332(a), 1441 and 1446 because this suit involves a controversy between citizens of different states, and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.00.

A. Parties are Diverse

9. Plaintiff asserts that it is a Texas Corporation with its principal place of business in Kerr County.⁹ And further, Plaintiff has not plead or alleged citizenship of any state other than Texas. Based on the law and evidence, Plaintiff is a citizen of Texas.¹⁰

³ See Exhibit A, Plaintiff's Original Petition, "V. Facts" paragraph 7.

⁴ See *Id.*, "VI. Causes of Action" paragraphs 11-22.

⁵ See Exhibit A Plaintiff's Original Petition and Exhibit B Citation

⁶ See Exhibit A Plaintiff's Original Petition, "V. Facts" paragraph 9.

⁷ See *Id.*, "VII. Attorney's Fees" paragraph 23.

⁸ See *Id.*, "X. Prayer"

⁹ See *Id.*, "III. Parties" paragraph 3

¹⁰ 28 U.S.C. § 1332(c)(1) ("[A] corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State of foreign state where it has its principal place of business...") and, *Quebe v. Ford Motor Co.*, 908 F. Supp. 446, 449 (W.D. Tex. 1995) (citing *Milstead Supply Co. v. Casualty Ins. Co.*, 797 F.

10. Defendant is incorporated under the laws of the state of Alabama and maintains its principle place of business in Colbert County, Alabama, located at 820 Mississippi St., Tuscumbia, Alabama 35674. Defendant is thus a citizen of Alabama.¹¹

B. Amount in Controversy

11. The party seeking federal jurisdiction must prove by a preponderance of the evidence that the amount in controversy exceeds \$75,000.00.¹² The removing party may satisfy its burden by either (1) demonstrating that is “facially apparent” from the petition that the claim likely exceeds \$75,000.00 or (2) “by setting forth the facts in controversy – preferably in the removal petition, but sometimes by affidavit – that support a finding of the requisite amount.”¹³

12. Here, it is facially apparent from Plaintiff’s petition that the claims exceed \$75,000.00. Specifically, Plaintiff makes a “Rule 47 Statement” indicating that it seeks monetary relief over \$100,000 but not more than \$200,000.¹⁴ And more specifically, Plaintiff claims Defendant owes \$127,121.89.¹⁵

13. Based on the foregoing, and on the face of Plaintiff’s Original Petition, the amount in controversy exceeds \$75,000.00.

Removal is Procedurally Proper

14. This notice of removal is timely filed within thirty (30) days after service of process upon Defendant.¹⁶

Supp. 569, 571 (W.D.Tex 1992)) (“When a party is a corporation, citizenship is determined by where the corporation is incorporated and the location of the corporation’s principal place of business”).

¹¹ *Id.*

¹² *Grant v. Chevron Phillips Chem. Co. L.P.*, 309 F.3d 864, 868 (5th Cir. 2002)

¹³ *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995).

¹⁴ See Exhibit A, Plaintiff’s Original Petition, “II. Rule 47 Statement” paragraph 2.

¹⁵ See Exhibit A, Plaintiff’s Original Petition, “V. Facts” paragraph 9.

¹⁶ See 28 U.S.C. § 1446 (b)(1), and Exhibit B, Citation, which is dated June 3, 2020.

15. Venue for the removal is proper in this Court under 28 U.S.C. § 1441 (a) because this District and Division of this Court embraces Kerr County, Texas, the place where the State Court suit was filed.¹⁷
16. Pursuant to 28 U.S.C § 1446(a), all pleadings, process and orders served upon Defendant in the State Court action are attached herein as Exhibit A and Exhibit B.
17. Pursuant to 28 U.S.C. § 1446(d), Defendant will promptly provide a true and correct copy of this Notice of removal to Plaintiff and to the District Clerk of Kerr County, Texas.

Prayer for Relief

18. Defendant, Hi-Temp, Inc., prays that the Court accept jurisdiction over the State Court action for the reasons set forth herein, and grant any other such relief that it may show itself entitled to.

Respectfully submitted,

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By: /s/ Jason Wilkes

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ATTORNEY FOR DEFENDANT
HI-TEMP, INC.

¹⁷ See Exhibit A & Exhibit B

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served on the following counsel this
26th day of June 2020, pursuant to Rule 5 of the Federal Rules of Civil
Procedure, via email and via e-service in the State Court Proceeding:

/s/ Jason Wilkes

JASON WILKES

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